No. 06-984

IN THE

Supreme Court of the United States

JOSÉ ERNESTO MEDELLÍN,

Petitioner,

v.

THE STATE OF TEXAS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF TEXAS

BRIEF OF INTERNATIONAL COURT OF JUSTICE EXPERTS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

LORI FISLER DAMROSCH
Counsel of Record
435 West 116th Street
New York, NY 10027
(212) 854-3740

Of Counsel:
CHARLES OWEN VERRILL, JR.
JOHN B. REYNOLDS III
PAUL A. DAME
WILEY REIN LLP
1776 K Street, N.W.
Washington, D.C. 20006
(202) 719-7000

Attorneys for Amici Curiae

207560

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

TABLE OF CONTENTS

Page

TABLE OF CITED AUTHORITIES ii

INTEREST OF THE *AMICI CURIAE* 1

SUMMARY OF ARGUMENT 2

ARGUMENT 3

I. The Court Should Grant The Writ To Settle The Effects Within U.S. Law Of A Binding Judgment Of The International Court Of Justice In Respect Of Individuals Covered By The Judgment. 3

A. The *Avena* Judgment is Binding in International Law. 3

B. The *Avena* Judgment is Binding Under the Supremacy Clause. 8

II. This Court Should Grant The Writ To Uphold U.S. Commitments Under Dispute Settlement Treaties. 10

III. This Court Should Grant The Writ To Fulfill The U.S. Commitment To Settle A Dispute With Mexico Concerning Treatment Of Mexican Nationals In The United States. .. 14

CONCLUSION 19

APPENDIX – LIST OF *AMICI* 1a

TABLE OF CITED AUTHORITIES

Page

CASES

International Court of Justice Cases

Aerial Incident of 3 July 1988 (Iran v. U.S.), 1996 ICJ 9 13

Aerial Incidents,
1954 ICJ 99 (U.S. v. Hung.) 13
1954 ICJ 103 (U.S. v. USSR) 13
1956 ICJ 6 (U.S. v. Cz.) 13
1956 ICJ 9 (U.S. v. USSR) 13
1958 ICJ 158 (U.S. v. USSR) 13
1959 ICJ 276 (U.S. v. USSR) 13
1960 ICJ 146 (U.S. v. Bulg.) 13

Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia-Herzegovina v. Serbia-Montenegro), 2007 ICJ No. 91 ..... 4, 5, 7

Avena and Other Mexican Nationals (Mex. v. U.S.), 2004 ICJ No. 128 ..... *passim*

Elettronica Sicula S.p.A. (ELSI) (U.S. v. Italy), 1989 ICJ 15 ..... 11, 13

Gulf of Maine (Delimitation of the Maritime Boundary in the Gulf of Maine Area) (Can./U.S.), 1984 ICJ 246 ..... 11, 12

Interhandel (Switz. v. U.S.), 1959 ICJ 16 13

Cited Authorities

Page

LaGrand (F.R.G. v. U.S.),
2001 ICJ 466 13

Legality of Use of Force (Yugo. v. U.S.),
1999 ICJ 916 13

Lockerbie (Questions of Interpretation and Application of the 1971 Montreal Convention)
(Libya v. U.S.), 2003 ICJ 152 14

Military and Paramilitary Activities in and against Nicaragua
(Nic. v. U.S.), 1986 ICJ 14 ..... 9-10, 12

Monetary Gold Removed from Rome in 1943
(Italy v. Fr., U.K., U.S.), 1954 ICJ 19 13

Nuclear Tests (Austl. & N.Z. v. Fr.),
1974 ICJ 253, 457 12

Oil Platforms (Iran v. U.S.),
2003 ICJ 161 14

Rights of Nationals of the United States of America in Morocco (Fr. v. U.S.),
1952 ICJ 176 12

Treatment in Hungary of Aircraft and Crew of the United States of America
(U.S. v. Hung.), 1954 ICJ 99 13

Cited Authorities

Page

United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran), 1979 ICJ 7, 1980 ICJ 3 ..... 10, 11, 13

Vienna Convention on Consular Relations (Para. v.U.S.), 1998 ICJ 426 14

Federal Cases

American Insurance Association v. Garamendi, 539 U.S. 396 (2003) 17

Bremen v. Zapata Off-Shore Co., 407 U.S. 1 (1972) 5, 16

Committee of United States Citizens Living in Nicaragua v. Reagan, 859 F.2d 929 (D.C. Cir. 1988) 9-10

Conde v. Starlight I, Inc., 103 F.3d 210 (1st Cir. 1997) 13

Crosby v. National Foreign Trade Council, 530 U.S. 363 (2000) 17

Dames & Moore v. Regan, 453 U.S. 654 (1981) 17

La Abra Silver Mining Co. v. United States, 175 U.S. 423 (1899) 5-6

Medellín v. Dretke, 544 U.S. 660 (2005) 6-7

Cited Authorities

Page

Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth,
473 U.S. 614 (1985) 5, 16

Olympic Airways v. Husain,
540 U.S. 644 (2004) 16

Sanchez-Llamas v. Oregon,
548 U.S. ___, 126 S. Ct. 2669 (2006) 3, 7, 9

United States v. Belmont,
301 U.S. 324 (1937) 17

United States v. Pink,
315 U.S. 203 (1942) 17

State Cases

Torres v. Oklahoma, No. PCD-04-442
(Okla. Crim. App. May 13, 2004),
120 P.3d 1184 (Okla. 2005) 7

Foreign Cases

Comeau's Sea Foods Ltd. v. Canada
(Minister of Fisheries and Oceans),
[1992] 3 F.C. 54 (Can. Fed. Ct.), *rev'd*,
[1995] 2 F.C. 467, *aff'd*, [1997] 1 S.C.R. 12 ... 13

Mersey Seafoods Ltd. v. Minister of Nat'l Revenue,
[1985] 2 C.T.C. 2485 (Can. Tax Ct.) 13

Cited Authorities

Page

CONSTITUTIONAL PROVISIONS

U.S. CONST. art. II 4

U.S. CONST. art. VI 3, 8

TREATIES

Charter of the United Nations,
59 Stat. 1031, T.S. 993 .....2, 3, 11

Optional Protocol to the Vienna Convention
on Consular Relations Concerning the
Compulsory Settlement of Disputes,
April 24, 1963, 21 U.S.T. 325,
T.I.A.S. No. 6820, 596 U.N.T.S. 487 ... 2, 4, 8, 10, 15, 16

Statute of the International Court of Justice,
59 Stat. 1055 (1945) 2, 3, 4, 5, 11, 12

Vienna Convention on Consular Relations,
April 24, 1963, 21 U.S.T. 77,
T.I.A.S. No. 6820, 596 U.N.T.S. 261 .....
.....2, 6, 8, 9, 10, 14, 15, 18, 19

OTHER AUTHORITIES

Brief for the United States as Amicus Curiae
Supporting Respondent, *Medellín v. Dretke*, 544
U.S. 660 (2005) 6-7

Brief for the United States as Amicus Curiae, *Ex Parte*
Medellín (Ct. Crim. App. TX, Sept. 2, 2005) ... 7

Cited Authorities

Page

Brief for the United States as Amicus Curiae Supporting Respondents, *Bustillo v. Johnson* and *Sanchez-Llamas v. Oregon*, 548 U.S. __, 126 S. Ct. 2669 (2006) 7

President George W. Bush, Memorandum on Compliance with the Decision of the International Court of Justice in *Avena*, Feb. 28, 2005 ..... 6, 12

Goler Teal Butcher, *The Consonance of U.S. Positions with the International Court's Advisory Opinions, in* THE INTERNATIONAL COURT OF JUSTICE AT A CROSSROADS 423 (Lori F. Damrosch ed., 1987) .. 11

Jonathan I. Charney, *Disputes Implicating the Institutional Credibility of the Court, in* THE INTERNATIONAL COURT OF JUSTICE AT A CROSSROADS 288 (Lori F. Damrosch ed., 1987) 11

115 Cong. Rec. 30997 (Oct. 22, 1969) 8

Dep't of State Daily Press Briefing (Mar. 10, 2005), *at* http://www.state.gov/r/pa/prs/dpb/2005/43225.htm 16

Walter H. Faulkner (U.S. v. Mex.), Opinions of the Commissioners Under the Convention Concluded September 8, 1923 (1927) 14

Terry D. Gill, *International Court of Justice – Diplomatic Protection – U.S.-Italian Treaty of Friendship, Commerce and Navigation*, 84 AM. J. INT'L L. 249 (1990) 13

Cited Authorities

Page

Tom Ginsburg & Richard H. McAdams, *Adjudicating in Anarchy: An Expressive Theory of International Dispute Resolution*, 45 WM. & MARY L. REV. 1229 (2004) 11

ANTONIO GÓMEZ ROBLEDO, MÉXICO Y EL ARBITRAJE INTERNACIONAL (1965) 18

G. HACKWORTH, DIGEST OF INTERNATIONAL LAW (1942) 14, 15

Manley O. Hudson, *The Thirty-First Year of the World Court*, 47 AM J. INT'L L. 1 (1953) 12

1979 ICJ Pleadings, *United States Diplomatic and Consular Staff in Tehran* (U.S. v. Iran) 10

Jesse Lewis (The David J. Adams) Claim (U.S. v. Gr. Br., 1921), 6 U.N. Rep. Int'l Arb. Awards 85 ... 16

Kennedy Says U.S. Was Wrong in Mexico Border Disagreement, N.Y. TIMES, Jul. 6, 1962 18

SHELDON B. LISS, A CENTURY OF DISAGREEMENT: THE CHAMIZAL CONFLICT, 1864-1964 (1965) 18

Statement of J. Edward Lyerly, Deputy Legal Adviser for Administration, U.S. Department of State, Before the Senate Committee on Foreign Relations, *reprinted in* Sen. Exec. Rep. No. 91-9, 91st Cong., 1st Sess. (1969) 8

Cited Authorities

Page

Fred L. Morrison, *Treaties as a Source of Jurisdiction, Especially in U.S. Practice*, *in* THE INTERNATIONAL COURT OF JUSTICE AT A CROSSROADS (Lori F. Damrosch ed., 1987) 10

Sean D. Murphy, *Contemporary Practice of the United States Relating to International Law: Implementation of* Avena *Decision by Oklahoma Court*, 98 AM. J. INT'L L.579 (2004) 7

Note, *Judicial Decisions: Morocco–Criminal Jurisdiction over U.S. Citizens–. . .–International Court of Justice*, 49 AM. J. INT'L L. 263 (1955) ... 12

Colter Paulson, *Compliance With Final Judgments of the International Court of Justice Since 1987*, 98 AM. J. INT'L L. 434 (2004) 11

Report of the United States Delegation to the Vienna Conference on Consular Relations, *reprinted in* Sen. Exec. E, 91st Cong., 1st Sess., May 8, 1969 ..... 15, 16

RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES (1987) 8, 18

CHRISTOPH C. SCHREUER, DECISIONS OF INTERNATIONAL INSTITUTIONS BEFORE DOMESTIC COURTS (1981) .. 12

FRANCIS J. WEBER, THE UNITED STATES VERSUS MEXICO: THE FINAL SETTLEMENT OF THE PIOUS FUND (1969) 18

Cited Authorities

Page

M. WHITEMAN, DIGEST OF INTERNATIONAL LAW (1970) 14, 18

Percy Don Williams, Jr., *Fifty Years of the Chamizal Controversy – A Note on International Arbitral Appeals*, 25 TEX. L. REV. 455 (1947) 18

1961-II Y.B. INT'L L. COMM'N 88-128 15

INTEREST OF THE *AMICI CURIAE*

Amici are professors and scholars of law expert in the fields of international law, international dispute settlement, and the application of international law by courts in the United States.[1] (A List of *Amici* is set forth in the Appendix.) *Amici* are experienced in the work of international tribunals, notably the International Court of Justice (ICJ), and include former officials of the U.S. Department of State who have represented the United States at the ICJ. *Amici* seek to present their views concerning the obligations arising from a final judgment of the ICJ interpreting a treaty of the United States in proceedings in which the United States participated fully, and the respect that should be accorded to the judgment by all courts in the United States, in the context of a petition to allow review and reconsideration of a conviction and death sentence.

Amici limit their submission to questions concerning the ICJ judgment interpreting the consular treaty and the rights that individuals may assert under that judgment and treaty in U.S. courts. They do not take a position on the death penalty as such; indeed, *Amici* occupy diverse points on the spectrum of opinion about the death penalty, as well as on other political controversies. *Amici* are united in the view that an ICJ judgment interpreting and applying a treaty, rendered in a case to which the United States was party and addressing the claims of certain named foreign nationals, is binding on all courts in the United States to which claims under the treaty may be presented in respect of each of the individuals subject to the judgment; that state courts are required to apply the treaty in the manner specified in the judgment; that state procedural default rules cannot foreclose the exercise of treaty rights to a hearing as held by the ICJ in its judgment concerning those individuals;

---

1. No party other than *Amici* and their counsel authored this brief in whole or in part, and no person or entity, other than *Amici* and their counsel, has made a monetary contribution to the preparation or submission of this brief. Letters of consent to the filing of this *amicus curiae* brief are on file with the Clerk of the Court.

and that petitioner has the right under the judgment to review and reconsideration of his conviction and sentence. This Court is the proper organ within our federal system to ensure that the state courts comply with the ICJ judgment.

SUMMARY OF ARGUMENT

Petitioner is one of 49 Mexican nationals currently on death row in state courts in the United States, who are covered by the final judgment of the International Court of Justice (ICJ) in *Avena and Other Mexican Nationals* (Mex. v. U.S.), 2004 ICJ No. 128. All those covered by *Avena* are similarly situated, in that they were not advised in a timely manner of their rights under the Vienna Convention on Consular Relations, April 24, 1963, 21 U.S.T. 77, T.I.A.S. No. 6820, 596 U.N.T.S. 261, to contact the Mexican consular post, were convicted and sentenced to death without benefit of timely consular services, and have been held by the ICJ to be entitled to review and reconsideration of their convictions and sentences as a remedy for that treaty violation – a violation that the United States has acknowledged.

The court below erred in denying the relief that the ICJ has found to be required to redress the treaty violations in *Avena*. *Avena* resulted from a treaty-based judicial process to which the United States fully consented, in which the United States fully participated, and which binds the United States as a whole. The United States consented to the jurisdiction of the ICJ to decide this dispute and is obliged under Article 94 of the U.N. Charter, Article 59 of the ICJ Statute, and the Vienna Convention and its Optional Protocol – four treaties that were in force for the United States at the time of *Avena* – to carry out the judgment. All courts in the United States are obliged to exercise their judicial powers within their respective jurisdictions consistently with the *Avena* judgment.

The petition should be granted to resolve an unsettled important question of federal law involving the national interest in treaty compliance. The Texas court of last resort reached a result that is incorrect and conflicts with the final disposition of a comparable matter by the court of last resort in Oklahoma.

This Court has not yet ruled on the effects in state and federal law of an ICJ judgment addressing treaty-based rights of specific individuals covered by the judgment. This Court should allow plenary review to prevent a misinterpretation of its prior rulings from obstructing U.S. compliance with its international obligations.

ARGUMENT

I. The Court Should Grant The Writ To Settle The Effects Within U.S. Law Of A Binding Judgment Of The International Court Of Justice In Respect Of Individuals Covered By The Judgment.

The Texas Court of Criminal Appeals erred in taking this Court's decision in *Sanchez-Llamas v. Oregon*, 548 U.S. ___, 126 S. Ct. 2669 (2006), to stand for the proposition that "*Avena* is not binding federal law" in respect of an individual covered by *Avena* itself. App. to Pet. for Cert., p. 20a; *see also* p. 24a, pp. 63a-64a. In declining to apply *Avena*'s reasoning for the benefit of petitioners Sanchez-Llamas and Bustillo, whose cases were not before the ICJ in *Avena*, this Court did not prejudice the binding force of the *Avena* judgment as an international obligation of the United States, and as a treaty-based obligation binding state courts under the Supremacy Clause of the U.S. Constitution, in cases to which *Avena* by its terms applies. The question of *Avena*'s effects on proceedings pending in the United States concerning individuals covered by *Avena* was not before this Court in *Sanchez-Llamas*; it is now properly presented in the instant petition.

A. The *Avena* Judgment is Binding in International Law.

Under Article 94(1) of the Charter of the United Nations, 59 Stat. 1031, T.S. 993 (1945), "[e]ach Member of the United Nations undertakes to comply with the decision of the [ICJ] in any case to which it is a party." Under Article 59 of the Statute of the ICJ, 59 Stat. 1055, T.S. 993 (1945) [ICJ Statute], which

is annexed to the U.N. Charter and is an integral part thereof,[2] decisions of the Court have "no binding force *except between the parties and in respect of that particular case*" (emphasis added). As the ICJ has recently explained, "Article 59 of the Statute, notwithstanding its negative wording, has at its core the positive statement that the parties are bound by the decision of the Court in respect of the particular case."[3] Thus, as between the United States and Mexico in respect of *Avena* (which includes the Medellín matter), the decision of the ICJ is indeed binding.

By ratifying the U.N. Charter and the annexed ICJ Statute as a treaty with the advice and consent of the U.S. Senate under Article II of the Constitution in 1945, the United States accepted the duty to comply with ICJ judgments in any cases that would come within the ICJ's consensual jurisdiction in the future. The undertakings to comply with ICJ decisions and to treat them as binding remain in force as treaty obligations of the United States.

The jurisdiction of the ICJ in the *Avena* case was founded on consent and reciprocity under Article 36(1) of the ICJ Statute, which establishes jurisdiction over "all matters specially provided for . . . in treaties and conventions in force." The Optional Protocol was a treaty in force under Article 36(1) of the ICJ Statute at the time of *Avena*.[4] Proceedings under Article

---

2. According to Article 93 of the U.N. Charter, all U.N. Members are *ipso facto* parties to the ICJ Statute.

3. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Bosnia-Herzegovina v. Serbia-Montenegro), 2007 ICJ No. 91, para. 115.

4. Optional Protocol to the Vienna Convention on Consular Relations Concerning the Compulsory Settlement of Disputes, April 24, 1963, 21 U.S.T. 325, T.I.A.S. No. 6820, 596 U.N.T.S. 487. Article I of the Optional Protocol states: "Disputes arising out of the interpretation or application of the [Vienna] Convention shall lie within the compulsory jurisdiction of the International Court of Justice and may accordingly be brought before the Court by a written application made by any party to the dispute being a Party to the present Protocol."

(Cont'd)

36(1) produce binding judgments under Article 59 of the Statute, which are "final and without appeal" under Article 60. As the ICJ has recalled,

> it is in the interest of a party that an issue which has already been adjudicated in favour of that party not be argued again. . . . Depriving a litigant of the benefit of a judgment it has already obtained must in general be seen as a breach of the principles governing the legal settlement of disputes.[5]

A litigant's obligation to carry out judgments against it is implicit in the rule of law.

Amici respectfully emphasize the fully consensual nature of the obligations undertaken when the United States agreed by treaty to the Vienna Convention and to the Optional Protocol's system for binding settlement of disputes arising thereunder. The Optional Protocol serves as a forum selection clause, with the effect that parties that have selected the ICJ as the forum to decide their disputes are bound to carry out its decisions.[6] The United States is free not to enter into treaties, and is free not to accept optional dispute settlement clauses, but once having given consent to a treaty and to a treaty-based dispute settlement system, the United States is bound to comply with the obligations to which it has agreed. Indeed, this Court has long recognized that when the United States undertakes to participate in international dispute settlement, the good faith of the United States is implicated in carrying out the resulting award. *See La*

(Cont'd)

On March 7, 2005, the United States gave notice of withdrawal from the Optional Protocol. Under international law, that notice cannot have retroactive effect on the obligation to comply with a judgment entered when the Optional Protocol was fully in force for both parties to the judgment.

5. *Bosnian Genocide*, note 3 *supra*, 2007 ICJ No. 91, para. 116.

6. *Cf. Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 8-9 (1972); *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth*, 473 U.S. 614, 629 (1985).

Abra Silver Mining Co. v. United States, 175 U.S. 423, 463 (1899).

The Texas court misunderstood the nature of an international judgment in treating *Avena* as not binding. A state court is not free to depart from the interpretation and application of an international treaty as authoritatively settled by an international tribunal exercising a consent-based jurisdiction accepted by the federal political branches, nor to place conditions on compliance that are inconsistent with the judgment itself. It was thus error for that court to continue to apply state rules of procedural default in a manner incompatible with *Avena*'s disposition concerning an individual named in the judgment,[7] as well as to deny the efficacy of President Bush's acknowledgment of the obligatory force of the judgment.[8]

The President of the United States accepts that the United States has incurred "international obligations" under *Avena*; *see* President George W. Bush, Memorandum on Compliance with the Decision of the International Court of Justice in *Avena*, Feb. 28, 2005. In its filings in earlier phases of the *Medellín* matter and in other cases, the United States Government has consistently acknowledged that "the United States has an international obligation under Article 94 [of the U.N. Charter] to comply with the *Avena* decision." *See* Brief for the United States as Amicus Curiae Supporting Respondent at 38, *Medellín*

---

7. The ICJ concluded that while the procedural default rule in itself does not violate Article 36 of the Vienna Convention, particular applications of the rule can violate the Convention, namely when a breach of Article 36(1) through failure to inform the individual of his rights precluded the exercise of his or his country's treaty rights. In *Avena*, the treatment of procedural default and related questions comes under the general heading of "Article 36, paragraph 2," beginning at paragraph 107 of the judgment. *See especially* paras. 111-113, 133-134, 138.

8. There is no warrant for the suggestion in the opinion below that a post-judgment executive agreement would be needed as a predicate for carrying out the already existing treaty-based obligation to comply with the judgment.

v. Dretke, 544 U.S. 660 (2005); *see also id.* at 38-39 n. 12 (using term "decision" under Article 59 to refer to "the portion of the ICJ ruling with which the United States has an international obligation to comply – what in United States practice would be called the judgment");[9] Brief for the United States as Amicus Curiae at 18 n. 2, *Ex Parte Medellín* (Ct. Crim. App. TX, Sept. 2, 2005). In its *Sanchez-Llamas* filing, the United States Government likewise confirmed that the United States "is obligated under international law to comply with the judgment of the ICJ in any case to which it is a party." Brief for the United States as Amicus Curiae Supporting Respondents at 29, *Bustillo v. Johnson* and *Sanchez-Llamas v. Oregon*, 548 U.S. __, 126 S. Ct. 2669 (2006). The United States Government also invoked the binding force of the *Avena* judgment in urging the Oklahoma authorities to grant review and reconsideration of the conviction and sentence in the matter of another individual covered by *Avena*, Osbaldo Torres, and those authorities correctly treated the judgment as binding in acting on the Department of State's representations. *See* Sean D. Murphy, *Contemporary Practice of the United States Relating to International Law: Implementation of* Avena *Decision by Oklahoma Court*, 98 AM. J. INT'L L.579, 581-84 (2004); *Torres v. Oklahoma*, No. PCD-04-442 (Okla. Crim. App. May 13, 2004) (granting remand for evidentiary hearing); *see also* 120 P.3d 1184 (Okla. 2005) (final judicial determination of whether governor's commutation of death sentence overcame any prejudice to defendant from treaty violation).

This Court in *Sanchez-Llamas* made a clear distinction between an ICJ judgment and ICJ treaty interpretations outside the framework of such a judgment, both by drawing attention to the terms of Article 59 of the ICJ Statute (quoting the language on binding force "between the parties and in respect of that particular case," 126 S.Ct at. 2684) and by observing that the

---

9. In its recent judgment in the *Bosnian Genocide* case, 2007 ICJ No. 91, para. 123, the ICJ confirmed that the operative part of a judgment possesses the force of *res judicata*.

ICJ's principal purpose is "to arbitrate particular disputes." In declining to give conclusive effects to such interpretations at the behest of persons not covered by the judgment, this Court took note that "the United States has agreed to 'discharge its international obligations' in having state courts give effect to the decision in *Avena*." 126 S. Ct. at 2685.

B. The *Avena* Judgment is Binding Under the Supremacy Clause.

The *Avena* judgment in petitioner's case implements a treaty obligation of the United States which is the supreme law of the land (U.S. Const. art. VI). It thus is binding on all courts in the United States and should be followed as the rule of decision in a state habeas petition.

The Senate approved the obligations of the Vienna Convention and ICJ compulsory jurisdiction over disputes under it when it gave unanimous advice and consent to ratification of the Vienna Convention and the Optional Protocol. *See* 115 Cong. Rec. 30997 (Oct. 22, 1969).[10] The Vienna Convention has been understood at all times to be a self-executing treaty.[11] Likewise, there has never been the slightest doubt that the Vienna Convention would prevail over any inconsistent state law.[12]

---

10. *See* RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES (1987), Intro. Note to Part III and §§ 301-312, 321; Intro. Note to Part IV, ch. 6 (before § 464); § 465.

11. The Department of State witness informed the Senate: "The Convention is considered entirely self-executive and does not require any implementing or complementing legislation." Statement of J. Edward Lyerly, Deputy Legal Adviser for Administration, U.S. Department of State, Before the Senate Committee on Foreign Relations, reprinted in Sen. Exec. Rep. No. 91-9, 91st Cong., 1st Sess. (1969), at 5. *See also* RESTATEMENT, Intro. Note before § 464.

12. The priority of treaty law over state law as required by the Supremacy Clause was spelled out explicitly in the State Department's responses to the Senate's questions:

> *Question. What is the effect of the convention on (a) Federal legislation; and (b) State laws?*

(Cont'd)

This Court in *Sanchez-Llamas* confirmed the well-established position that "a self-executing treaty binds the States pursuant to the Supremacy Clause" and that

> where a treaty provides for a particular judicial remedy, there is no issue of intruding on the constitutional prerogatives of the States or the other federal branches. Courts must apply the remedy as a requirement of federal law.

126 S. Ct. at 2680. While the Court there held that the remedy of suppression of evidence was not required by the Vienna Convention, it would be entirely compatible with the approach indicated by this Court in *Sanchez-Llamas* to consider the *Avena* judgment directly binding on state courts. Because *Avena* specified what is required by the Vienna Convention itself as a remedy for breaches, all aspects of the present petition are properly understood as implementation of self-executing treaty obligations.[13]

(Cont'd)

> Answer [after explaining a possible area of conflict not relevant here].
>
> To the extent that there are conflicts with Federal legislation or State laws the Vienna Convention, after ratification, would govern as in the case of bilateral consular conventions.

Sen. Exec. Rep. No. 91-9, at 18. This official response about the controlling effect of the Vienna Convention raised no concerns in the Senate, which gave unanimous advice and consent.

13. *Committee of United States Citizens Living in Nicaragua v. Reagan*, 859 F.2d 929, 937-938 (D.C. Cir. 1988), concerned a situation quite different from the present one. The ICJ's *Nicaragua* judgment (cited in note 19 *infra*) entailed aspects of international law (use of military force) that are non-self-executing in U.S. law. The plaintiffs who sought to enforce the *Nicaragua* judgment were strangers to the ICJ case, *see* 859 F.2d at 938, while *Avena* explicitly deals with petitioner's situation and specifies the remedy for his claims under a

(Cont'd)

II. This Court Should Grant The Writ To Uphold U.S. Commitments Under Dispute Settlement Treaties.

It is critical for the United States to uphold the obligatory character of compulsory jurisdiction under dispute settlement clauses to which it has agreed, in order to secure the benefits of compliance by other participants under comparable treaties. The United States was the first state to turn to the ICJ in a Vienna Convention dispute, when it brought an application against Iran concerning U.S. diplomatic and consular personnel held hostage in Tehran in 1979. *See United States Diplomatic and Consular Staff in Tehran* (U.S. v. Iran), 1979 ICJ 7, 1980 ICJ 3, 5, 24-26. The U.S. pleadings in that matter analyze the obligation of parties to the Optional Protocol when disputes arise to abide by ICJ decisions. *See* 1979 ICJ Pleadings, *United States Diplomatic and Consular Staff in Tehran*, at 141-152. When the ICJ indicated provisional measures in 1979 and entered judgment in 1980, the United States insisted on Iranian compliance and invoked the ICJ's decisions in U.S. and foreign tribunals.

Approximately 70 U.S. treaties now in force contain obligations comparable to those in the Optional Protocol for submission of treaty-based disputes to the ICJ.[14] These include bilateral and multilateral treaties involving substantial economic, political, and other interests. The United States is a frequent litigant at the ICJ, both as applicant and as respondent. Indeed, the United States has been involved in more ICJ cases than any

---

(Cont'd)

self-executing treaty. Finally, Congress and the President had repudiated the *Nicaragua* judgment in a subsequent conflicting statute, which the court of appeals found controlling, *see* 859 F.2d at 936-937. Here, no statute rejects *Avena*, and the President has formally endorsed compliance through state courts.

14. *See* Fred L. Morrison, *Treaties as a Source of Jurisdiction, Especially in U.S. Practice*, *in* THE INTERNATIONAL COURT OF JUSTICE AT A CROSSROADS 58-81 (Lori F. Damrosch ed., 1987) [CROSSROADS]. With only a few exceptions, all such treaties remain in force for the United States in 2007.

other state:[15] in total, the United States has been party to 21 cases at the ICJ,[16] of which 10 have been brought by the United States as applicant or by special agreement and 11 have been brought against the United States.[17] Since each of the 70 treaties with an ICJ dispute settlement clause entails obligations under those treaties and under the U.N. Charter (art. 94) and ICJ Statute (arts. 36(1), 59), failure to carry out *Avena* could prejudice the ability of the United States to hold other states to their dispute settlement obligations and to sustain U.S. credibility before the ICJ in future proceedings.

The United States has a major stake in maintaining a record of abiding by the outcome of ICJ dispute settlement, since it continues to be active in that forum. Compliance with ICJ final judgments has generally been high, including in the cases in which the United States has been a party.[18] States have

15. For a listing of all ICJ cases grouped by state, see the ICJ website at www.icj-cij.org.

16. The United States has also taken part in almost all proceedings for advisory opinions under Article 65 of the ICJ Statute. *See* Goler Teal Butcher, *The Consonance of U.S. Positions with the International Court's Advisory Opinions*, *in* CROSSROADS at 423; for a current listing, see ICJ Website.

17. The cases initiated by the United States include seven involving Soviet-bloc aerial incidents, as well as *Tehran Hostages* (Iran 1979-81), *Gulf of Maine* (Canada 1981-84), and *Elettronica Sicula S.p.A. (ELSI)* (Italy 1987-89).

18. Recent studies find compliance with two-thirds of the ICJ's substantive judgments and as high as 80% compliance with final judgments over a substantial period. *See* Colter Paulson, *Compliance With Final Judgments of the International Court of Justice Since 1987*, 98 AM. J. INT'L L. 434, 456-460 (2004) (compliance rate of 60% with judgments issued in last 15 years; likelihood that rate would go up to 80% rate for prior periods in light of efforts to comply over time); Tom Ginsburg & Richard H. McAdams, *Adjudicating in Anarchy: An Expressive Theory of International Dispute Resolution*, 45 WM. & MARY L. REV. 1229, 1308-1311 (2004) (overall compliance rate of 68%, counting disregard of provisional measures as noncompliance); Jonathan I. Charney, *Disputes Implicating the Institutional Credibility of the Court*, *in* CROSSROADS at 288, 310-319 (only 5 cases of noncompliance with final judgments 1946-1986).

exceptionally disregarded ICJ rulings when they contested the Court's consensual jurisdiction, notably where respondents insisted that the ICJ had been granted no competence to decide a matter involving a state's vital security interests.[19] In the present case, by contrast, jurisdiction was by consent and no security interest would be prejudiced by compliance. Indeed, President Bush's memorandum on compliance with *Avena* confirms the national interest in fulfilling international obligations.

Implementation of ICJ judgments has proceeded smoothly in almost all treaty-based cases and those involving the rights of aliens within a state's territory. In the first case leading to a final judgment involving the United States, both the United States and France promptly complied with the judgment in *Rights of Nationals of the United States of America in Morocco* (Fr. v. U.S.), 1952 ICJ 176.[20] In *Gulf of Maine* (Canada/U.S.), 1984 ICJ 246, the final judgment drew a maritime boundary;

---

19. See especially the U.S. position on *Military and Paramilitary Activities in and against Nicaragua* (Nic. v. U.S.), 1986 ICJ 14, note 13 above. France denied the existence of proper ICJ jurisdiction in *Nuclear Tests* (Austl. & N.Z. v. Fr.), 1974 ICJ 253, 457. The United States and France reacted to these cases by withdrawing from the general compulsory jurisdiction clause of Article 36(2) of the ICJ Statute, while maintaining treaty-based acceptances under Article 36(1).

20. The final judgment in *Morocco* had elements requiring implementation by each side. The United States dismissed all cases before U.S. consular courts in Morocco that were outside the limits of jurisdiction specified by the ICJ, and French courts relied on the judgment in local (Moroccan) and appellate rulings (by the *Cour de cassation*), which referred to the ICJ judgment as dispositive. *See* Manley O. Hudson, *The Thirty-First Year of the World Court*, 47 AM. J. INT'L L. 1, 8, 14-15 (1953); Note, *Judicial Decisions: Morocco–Criminal Jurisdiction over U.S. Citizens– . . . –International Court of Justice*, 49 AM. J. INT'L L. 263, 267 (1955); CHRISTOPH C. SCHREUER, DECISIONS OF INTERNATIONAL INSTITUTIONS BEFORE DOMESTIC COURTS 33-34, 199, 221 n. 100 (1981) (French courts "do not seem to have regarded any domestic implementing measures for the application of the International Court's judgment as being necessary;" direct application of decision derived from French submission to ICJ jurisdiction).

both sides accepted the judgment and promptly complied with it.[21] In *ELSI*, 1989 ICJ 15, the United States embraced the ICJ forum as the last recourse of its diplomatic efforts and accepted the judgment as dispositive of the claims it had raised on behalf of U.S. investors.[22] Thus, apart from *Nicaragua* (addressed in note 13 above) and such continuing problems as may exist in the wake of *Avena*, the United States has complied with all final ICJ judgments addressed to it and has benefited from the compliance of all of its adversaries with final judgments addressed to them, except for Iran in the *Tehran Hostages* case.[23]

---

21. Compliance having been assumed, only a few cases refer to the ICJ judgment. *See, e.g., Conde v. Starlight I, Inc.*, 103 F.3d 210 (1st Cir. 1997) (Hague Line mentioned); *Comeau's Sea Foods Ltd. v. Canada (Minister of Fisheries and Oceans)*, [1992] 3 F.C. 54 (Can. Fed. Ct.), *rev'd*, [1995] 2 F.C. 467, *aff'd*, [1997] 1 S.C.R. 12 (plaintiff sought fishing license in area awarded to Canada by ICJ); *Mersey Seafoods Ltd. v. Minister of Nat'l Revenue*, [1985] 2 C.T.C. 2485 (Can. Tax Ct.), paras. 142-147 (ICJ decision became available after arguments concluded).

22. *See* Terry D. Gill, *International Court of Justice – Diplomatic Protection – U.S.-Italian Treaty of Friendship, Commerce and Navigation*, 84 Am. J. Int'l L. 249, 257 (1990).

23. In addition to the cases discussed in the text and *LaGrand* (F.R.G. v. U.S.), 2001 ICJ 466, which resulted in final judgment against the United States after the individuals in question had already been executed, the disposition of the remainder of the 21 cases to which the United States has been party is as follows:

Dismissal on Threshold Ground (No Jurisdiction or Claim Inadmissible): The seven Soviet-bloc *Aerial Incident* cases were dismissed for lack of jurisdiction. 1954 ICJ 99 (U.S. v. Hung.); 1954 ICJ 103 (U.S. v. USSR); 1956 ICJ 6 (U.S. v. Cz.); 1956 ICJ 9 (U.S. v. USSR); 1958 ICJ 158 (U.S. v. USSR); 1959 ICJ 276 (U.S. v. USSR); 1960 ICJ 146 (U.S. v. Bulg.). *Monetary Gold Removed from Rome in 1943* (Italy v. Fr., U.K., U.S.), 1954 ICJ 19, was dismissed for lack of an indispensable party. *Interhandel* (Switz. v. U.S.), 1959 ICJ 16, was dismissed for failure to exhaust local remedies. *Legality of Use of Force* (Yugo. v. U.S.), 1999 ICJ 916, was dismissed for lack of jurisdiction.

Dismissal Upon Settlement: *Aerial Incident of 3 July 1988* (Iran v. U.S.), 1996 ICJ 9, was discontinued after the United States agreed to

(Cont'd)

In view of the U.S. interest in credible fulfillment of dispute settlement undertakings, this Court should ensure that the courts below uphold the U.S. obligations to carry out the final judgment in *Avena*.

III. This Court Should Grant The Writ To Fulfill The U.S. Commitment To Settle A Dispute With Mexico Concerning Treatment Of Mexican Nationals In The United States.

Prior to the Vienna Convention, disagreements over the treatment of U.S. nationals in Mexico and Mexican nationals in the United States – including instances of denial of consular access – frequently led to diplomatic protests and international arbitration.[24] Codification of consular law in the Vienna

---

(Cont'd)

make an *ex gratia* payment. *Lockerbie (Questions of Interpretation and Application of the 1971 Montreal Convention)* (Libya v. U.S.), 2003 ICJ 152, was discontinued upon an overall settlement. *Vienna Convention on Consular Relations* (Para. v. U.S.), 1998 ICJ 426, was discontinued after provisional measures and before the merits.

Dismissal on Merits: *Oil Platforms* (Iran v. U.S.), 2003 ICJ 161, was dismissed on the merits of both Iran's claim and the U.S. counterclaim.

24. *See* 4 G. HACKWORTH, DIGEST OF INTERNATIONAL LAW 830-837 (1942) [HACKWORTH]; 7 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 626-658 (1970) [WHITEMAN], 8 WHITEMAN at 807-837. In the 1920s, a U.S.-Mexican claims commission held that "a foreigner, not familiar with the laws of the country where he temporarily resides, should be given [the] opportunity" of consular access. *Walter H. Faulkner* (U.S. v. Mex.), Opinions of the Commissioners Under the Convention Concluded September 8, 1923 (1927) at 86, 90; *see also* 4 HACKWORTH 830. Conversely, where California officials did not give the Mexican consulate access to a detained Mexican citizen, the Department of State stressed the importance of California's compliance with standards maintained by the United States in its dealings with other countries:

> Even in the absence of applicable treaty provisions this Government has always insisted that its consuls be

(Cont'd)

Convention has produced greater certainty of substantive rules in consular matters,[25] and the creation of a multilateral mechanism for binding settlement of consular disputes in the Optional Protocol obviated the need for a special arbitration agreement between the United States and Mexico to resolve a consular dispute.[26] The United States voluntarily accepted the Optional Protocol when it ratified the Vienna Convention in

---

(Cont'd)

> permitted to visit American citizens imprisoned throughout the world and it is believed that if [the] attitude [of the] District Attorney is maintained in [the] instant case there will be repercussions in Mexico and perhaps other countries unfavorable to American citizens.

4 HACKWORTH 836.

In the early 20th century, in preparation for arbitration with Mexico involving protection of nationals of one country in the other's territory, State Department lawyers sought instructions on how to deal with legal issues concerning actions of states of the Mexican federation, in light of mirror-image considerations of U.S. federalism. The Department replied that "in our dealings with foreign Governments having a federal system similar to our own, we have invariably insisted on the liability of the Federal Government." 5 HACKWORTH 593, 597 (1943).

25. Codification of consular law was undertaken by the U.N. International Law Commission and a diplomatic conference. *See* 1961-II Y.B. INT'L L. COMM'N 88-128. The United States played a leading role in negotiating the specific wording of Article 36 of the Convention and the Optional Protocol. *See* Report of the United States Delegation to the Vienna Conference on Consular Relations, *reprinted in* Sen. Exec. E, 91st Cong., 1st Sess., May 8, 1969, at 41, 59-61 [Report of U.S. Delegation].

26. The United States actively advocated the provision that became the Optional Protocol and resisted others' efforts to eliminate or weaken dispute settlement. *See* Report of U.S. Delegation at 72-73. The formulation from the Vienna Conference, fully supported by the United States, was an Optional Protocol that states would be free to accept or not; upon acceptance, a binding obligation would be created. *Ibid.*

1969,[27] and Mexico's subsequent acceptance of the same obligation created the necessary consent-based reciprocity for either state to sue the other on any dispute involving interpretation or application of the Convention.

No state can unilaterally determine the definitive meaning of an international treaty.[28] Thus, in a dispute under the Vienna Convention, the United States cannot impose its own view on Mexico (or on any other treaty partner),[29] or establish the measure of its own treaty compliance. Nor can disputes over the application of the Vienna Convention to particular facts, or over the remedy for breach, be determined by the United States as one party to the dispute. For authoritative resolution of such disputes, the Optional Protocol confers jurisdiction on the ICJ.

---

27. Withdrawal from the Optional Protocol does not affect the U.S. obligation to abide by the *Avena* judgment. At the same time as the announcement of withdrawal from the Protocol, the United States reaffirmed its commitment to comply with the *Avena* judgment. The State Department spokesman said (in response to a question): "The bottom line is we believe in the international system, we are committed participants in the international system, as reflected by . . . our decision to comply with the judgment." Dep't of State Daily Press Briefing (Mar. 10, 2005), *available at* http://www.state.gov/r/pa/prs/dpb/2005/43225.htm.

28. *See Jesse Lewis (The David J. Adams) Claim* (U.S. v. Gr. Br., 1921), 6 U.N. Rep. Int'l Arb. Awards 85 (British court decision could not be conclusive of meaning of U.S.-British treaty; arbitral tribunal had competence to interpret the treaty authoritatively). *See also Mitsubishi*, 473 U.S. at 629; *Bremen*, 407 U.S. at 9 (U.S. courts should not "insist on a parochial concept that all disputes must be resolved under our laws and in our courts. . . . We cannot have [international dealings] exclusively on our terms, governed by our laws, and resolved in our courts.").

29. For this reason, U.S. courts ought to give careful consideration to reasoned positions adopted by foreign or international as well as U.S. courts on points of treaty interpretation. *Cf. Olympic Airways v. Husain*, 540 U.S. 644, 660-661 (Scalia, J., dissenting). Where a tribunal has been accepted by the U.S. political branches as the forum for binding settlement of treaty disputes, deference to its ruling is required.

The jurisprudence of this Court accepts the authority of the federal government to settle disputes with foreign governments in a manner that binds state courts. In *United States v. Belmont*, 301 U.S. 324 (1937), and *United States v. Pink*, 315 U.S. 203 (1942), this Court found that the federal policy of the United States adopted in the context of definitive resolution of disputes with the Soviet Union would displace contrary state law. In *Dames & Moore v. Regan*, 453 U.S. 654, 679-680 (1981), this Court explained that claims by nationals of one country against another can be "sources of friction" in international relations and that dispute settlement procedures accepted by the U.S. political branches are a traditional and proper method for resolving such grievances. In *American Insurance Association v. Garamendi*, 539 U.S. 396 (2003), this Court confirmed that an executive policy in favor of achieving "legal peace" with foreign governments had to prevail over a state law affecting the jurisdiction of state courts.[30] Whatever might be the limits of federal authority to resolve disputes with foreign governments in some hypothetical scenario not involved here, it falls clearly within the core of federal power under the Constitution to accept the outcome of a treaty-based dispute resolution process as definitively settling a dispute over treatment of foreign nationals by the states and for this Court to ensure that state courts carry out the treaty-based judgment in question.

Refusal to grant review and reconsideration of petitioner's conviction and sentence as required by the ICJ would compound the treaty violation that occurred when the Texas authorities failed to inform petitioner of his right to communicate with the Mexican consulate. Such a refusal to accord this treaty-based remedy for a treaty violation would prejudice the U.S. ability to

---

30. In *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 383 (2000), this Court invalidated a state law that had embroiled the national government for some time in an international dispute settlement procedure. *A fortiori*, in the face of a binding judgment from treaty-based dispute settlement, a state rule must not impede treaty compliance and a judicial remedy must be available.

insist on compliance by other states with their obligations under the Vienna Convention toward the millions of U.S. nationals who visit or work in Mexico and in the other 164 parties to the Convention.[31]

Ultimately, it is the interpretation of this Court that must have conclusive effect under the Constitution.[32] It would be a justified assertion of the role of this Court, consistent with the principles of federalism and separation of powers, if the Court, as *Amici* urge, exercises its independent judgment to give effect to the legal obligations of the United States embodied in the *Avena* judgment.

---

31. On rare occasions of U.S. failure to implement obligations resulting from dispute settlement (as with prolonged noncompliance with the *Chamizal* arbitral award in Mexico's favor), detriments to U.S. economic and political interests are well-documented. *See* SHELDON B. LISS, A CENTURY OF DISAGREEMENT: THE CHAMIZAL CONFLICT, 1864-1964 68-69, 75-77, 86-88, 100-101 (1965); ANTONIO GÓMEZ ROBLEDO, MÉXICO Y EL ARBITRAJE INTERNACIONAL 161 (1965); Percy Don Williams, Jr., *Fifty Years of the Chamizal Controversy – A Note on International Arbitral Appeals*, 25 TEX. L. REV. 455, 461-462 (1947) (problems in negotiating with Mexico over expropriation of U.S. properties, in view of noncompliance with *Chamizal* award); FRANCIS J. WEBER, THE UNITED STATES VERSUS MEXICO: THE FINAL SETTLEMENT OF THE PIOUS FUND 42-50 (1969) (linkage between U.S. rejection of *Chamizal* and Mexico's suspension of payments under *Pious Fund* award). President Kennedy said that because of the U.S. refusal on *Chamizal*, "Mexico has been unwilling to take any other matter to arbitration, which has, of course, therefore lessened the harmony between the two countries." *See Kennedy Says U.S. Was Wrong in Mexico Border Disagreement*, N.Y. TIMES, Jul. 6, 1962, at 4, 8.

At the time of the eventual Chamizal settlement in 1963, the office of the Texas Attorney General concurred with the opinion of the Legal Adviser of the U.S. Department of State that the matter could be resolved with Mexico by treaty without Texas's consent, because of its international implications. *See* LISS at 95-97; 3 WHITEMAN at 680, 696-699.

32. *See* RESTATEMENT, § 112(2) ("The determination and interpretation of international law present federal questions and their disposition by the United States Supreme Court is conclusive for other courts in the United States") and comment *a*.

CONCLUSION

Amici urge this Court to ensure that actions and omissions of the State of Texas are remedied by the courts of that State, as the proper organs to bring about compliance with the *Avena* judgment. Refusal to grant the remedy for the Vienna Convention violations that has been determined by the ICJ in its judgment on petitioner's treaty claims would undermine the U.S. ability to insist on compliance by other states with their obligations under the Vienna Convention. Review and reconsideration of petitioner's conviction and sentence is necessary to avoid the adverse consequences that would result from failure to comply with the *Avena* judgment, which could include prejudice in connection with dispute settlement under other treaties.

By remanding with instructions to afford the remedy of review and reconsideration to redress the violation of the treaty as required by the *Avena* judgment, this Court will fulfill its responsibility within our constitutional system and will sustain compliance with the international obligations of the United States.

Respectfully submitted,

LORI FISLER DAMROSCH
Counsel of Record
435 West 116th Street
New York, NY 10027
(212) 854-3740

Of Counsel:
CHARLES OWEN VERRILL, JR.
JOHN B. REYNOLDS III
PAUL A. DAME
WILEY REIN LLP
1776 K Street, N.W.
Washington, D.C. 20006
(202) 719-7000

Attorneys for Amici Curiae

APPENDIX

APPENDIX – LIST OF *AMICI*

Lori Fisler Damrosch is the Henry L. Moses Professor of Law and International Organization at Columbia University and editor of *The International Court of Justice at a Crossroads* (1987). As an attorney in the U.S. Department of State between 1977 and 1981, she was one of the counsel for the United States in *United States Diplomatic and Consular Staff in Tehran* (U.S. v. Iran) 1979 ICJ 7, 1980 ICJ 3, and in the advisory opinion proceeding on *Interpretation of the Agreement of 25 March 1951 between the World Health Organization and Egypt*, 1980 ICJ 73.

Thomas M. Franck is Murry and Ida Becker Professor of Law Emeritus at New York University. He served as judge ad hoc of the International Court of Justice in *Sovereignty Over Pulau Ligitan and Pulau Sipadan* (Indonesia/Malaysia), 2001 ICJ 575, and as counsel for Chad in *Territorial Dispute* (Libya/Chad), 1994 ICJ 6, and for Bosnia-Herzegovina in the cases concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Bosnia-Herzegovina v. Serbia-Montenegro), 1993 ICJ 3, 325, 1996 ICJ 595, 2007 ICJ No. 91, and *Application for Revision of the Judgment of 11 July 1996* (Yugoslavia v. Bosnia-Herzegovina), 2003 ICJ 7.

Richard N. Gardner is Professor of Law and International Organization at Columbia University and was previously U.S. ambassador to Italy and Spain. As Deputy Assistant Secretary of State for International Organization Affairs, he was involved in the U.S. position in *the Certain Expenses of the United Nations* advisory opinion proceeding, 1962 ICJ 163. He served as counsel for the United States at the ICJ in *Elettronica Sicula S.p.A. (ELSI)* (U.S. v. Italy), 1989 ICJ 15.

Appendix

Louis Henkin is University Professor Emeritus at Columbia University and a past president of the American Society of International Law. He served as Chief Reporter for the American Law Institute's *Restatement (Third) of the Foreign Relations Law of the United States* and is the author of *Foreign Affairs and the United States Constitution* (2d ed. 1996).

Andreas F. Lowenfeld is the Herbert and Rose Rubin Professor of International Law at New York University. He served in the Office of the Legal Adviser of the U.S. Department of State between 1961 and 1966 and was Deputy Legal Adviser from 1964 to 1966. He was Associate Reporter for the American Law Institute's *Restatement (Third) of the Foreign Relations Law of the United States* and co-Reporter for the ALI's Project on Recognition and Enforcement of Foreign Judgments. He acted as counsel for the United States in *Oil Platforms* (Iran v. U.S.), 1996 ICJ 803, 2003 ICJ 161.

Bernard H. Oxman is Richard A. Hausler Professor of Law at the University of Miami and a former Assistant Legal Adviser of the U.S. Department of State. He was a legal consultant for the United States in *Delimitation of the Maritime Boundary in the Gulf of Maine Area* (Canada/U.S.), 1984 ICJ 246. He served as a judge ad hoc of the International Tribunal for the Law of the Sea in 2003 and has been appointed as a judge ad hoc of the International Court of Justice in *Maritime Delimitation in the Black Sea* (Romania v. Ukraine), 2004 ICJ No. 132.

Appendix

W. Michael Reisman is the Myres S. McDougal Professor of International Law at Yale University and a former member and president of the Inter-American Commission on Human Rights. He has served as counsel in *Maritime Delimitation and Territorial Questions between Qatar and Bahrain* (Qatar v. Bahrain), 2001 ICJ 40, and for the Philippines in *Sovereignty over Pulau Ligitan and Pulau Sipadan* (Indonesia/Malaysia), 2001 ICJ 575.

Stephen M. Schwebel was a judge of the International Court of Justice from 1981 to 2000 and its president from 1997 to 2000. Previously he served for fourteen years in the Office of the Legal Adviser of the U.S. Department of State, including as Assistant Legal Adviser and Deputy Legal Adviser, in which offices he represented the United States in the *Certain Expenses of the United Nations* advisory opinion proceeding, 1962 ICJ 163; *United States Diplomatic and Consular Staff in Tehran* (U.S. v. Iran), 1979 ICJ 7, 1980 ICJ 3; and in the advisory opinion proceeding on *Interpretation of the Agreement of 25 March 1951 between the World Health Organization and Egypt*, 1980 ICJ 73.

Anne-Marie Slaughter is the Dean of the Woodrow Wilson School at Princeton University and past president of the American Society of International Law. She was formerly the J. Sinclair Armstrong Professor of Comparative and International Law at Harvard University.